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SENATE BILL 440

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John T. L. Grubescic

AN ACT

RELATING TO CRIMINAL LAW; MODIFYING THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR TO ALLOW THREE HOURS FOR THE ADMINISTRATION OF A CHEMICAL TEST TO DETERMINE ALCOHOL CONCENTRATION; PROVIDING FOR THE ADMISSIBILITY OF CHEMICAL TESTS TAKEN MORE THAN THREE HOURS AFTER DRIVING; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2005, Chapter 241, Section 5 and by Laws 2005, Chapter 269, Section 5) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE .164910.1GR

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1 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

2 A. It is unlawful for a person who is under the
3 influence of intoxicating liquor to drive a vehicle within this
4 state.

5 B. It is unlawful for a person who is under the
6 influence of any drug to a degree that renders [~~him~~] the person
7 incapable of safely driving a vehicle to drive a vehicle within
8 this state.

9 C. It is unlawful for:

10 (1) a person [~~who~~] to drive a vehicle in this
11 state if the person has an alcohol concentration of eight one
12 hundredths or more in [~~his~~] the person's blood or breath [~~to~~
13 ~~drive a vehicle within this state~~] within three hours of
14 driving the vehicle; or

15 (2) a person [~~who~~] to drive a commercial motor
16 vehicle in this state if the person has an alcohol
17 concentration of four one hundredths or more in [~~his~~] the
18 person's blood or breath [~~to drive a commercial motor vehicle~~
19 ~~within this state~~] within three hours of driving the commercial
20 motor vehicle.

21 D. Aggravated driving while under the influence of
22 intoxicating liquor or drugs consists of a person who:

23 (1) drives a vehicle in this state and has an
24 alcohol concentration of sixteen one hundredths or more in
25 [~~his~~] the person's blood or breath [~~while driving a vehicle~~

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1 ~~within this state]~~ within three hours of driving the vehicle;

2 (2) has caused bodily injury to a human being
3 as a result of the unlawful operation of a motor vehicle while
4 driving under the influence of intoxicating liquor or drugs; or

5 (3) refused to submit to chemical testing, as
6 provided for in the Implied Consent Act, and in the judgment of
7 the court, based upon evidence of intoxication presented to the
8 court, was under the influence of intoxicating liquor or drugs.

9 E. A person under first conviction pursuant to this
10 section shall be punished, notwithstanding the provisions of
11 Section 31-18-13 NMSA 1978, by imprisonment for not more than
12 ninety days or by a fine of not more than five hundred dollars
13 (\$500), or both; provided that if the sentence is suspended in
14 whole or in part or deferred, the period of probation may
15 extend beyond ninety days but shall not exceed one year. Upon
16 a first conviction pursuant to this section, an offender shall
17 be sentenced to not less than twenty-four hours and not more
18 than forty-eight hours of community service. In addition, the
19 offender may be required to pay a fine of three hundred dollars
20 (\$300). The offender shall be ordered by the court to
21 participate in and complete a screening program described in
22 Subsection K of this section and to attend a driver
23 rehabilitation program for alcohol or drugs, also known as a
24 "DWI school", approved by the bureau and also may be required
25 to participate in other rehabilitative services as the court

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1 shall determine to be necessary. In addition to those
2 penalties, when an offender commits aggravated driving while
3 under the influence of intoxicating liquor or drugs, the
4 offender shall be sentenced to not less than forty-eight
5 consecutive hours in jail. If an offender fails to complete,
6 within a time specified by the court, any community service,
7 screening program, treatment program or DWI school ordered by
8 the court or fails to comply with any other condition of
9 probation, the offender shall be sentenced to not less than an
10 additional forty-eight consecutive hours in jail. Any jail
11 sentence imposed pursuant to this subsection for failure to
12 complete, within a time specified by the court, any community
13 service, screening program, treatment program or DWI school
14 ordered by the court or for aggravated driving while under the
15 influence of intoxicating liquor or drugs shall not be
16 suspended, deferred or taken under advisement. On a first
17 conviction pursuant to this section, any time spent in jail for
18 the offense prior to the conviction for that offense shall be
19 credited to any term of imprisonment fixed by the court. A
20 deferred sentence pursuant to this subsection shall be
21 considered a first conviction for the purpose of determining
22 subsequent convictions.

23 F. A second or third conviction pursuant to this
24 section shall be punished, notwithstanding the provisions of
25 Section 31-18-13 NMSA 1978, by imprisonment for not more than

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1 three hundred sixty-four days or by a fine of not more than one
2 thousand dollars (\$1,000), or both; provided that if the
3 sentence is suspended in whole or in part, the period of
4 probation may extend beyond one year but shall not exceed five
5 years. Notwithstanding any provision of law to the contrary
6 for suspension or deferment of execution of a sentence:

7 (1) upon a second conviction, an offender
8 shall be sentenced to a jail term of not less than ninety-six
9 consecutive hours, forty-eight hours of community service and a
10 fine of five hundred dollars (\$500). In addition to those
11 penalties, when an offender commits aggravated driving while
12 under the influence of intoxicating liquor or drugs, the
13 offender shall be sentenced to a jail term of not less than
14 ninety-six consecutive hours. If an offender fails to
15 complete, within a time specified by the court, any community
16 service, screening program or treatment program ordered by the
17 court, the offender shall be sentenced to not less than an
18 additional seven consecutive days in jail. A penalty imposed
19 pursuant to this paragraph shall not be suspended or deferred
20 or taken under advisement; and

21 (2) upon a third conviction, an offender shall
22 be sentenced to a jail term of not less than thirty consecutive
23 days, ninety-six hours of community service and a fine of seven
24 hundred fifty dollars (\$750). In addition to those penalties,
25 when an offender commits aggravated driving while under the

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1 influence of intoxicating liquor or drugs, the offender shall
2 be sentenced to a jail term of not less than sixty consecutive
3 days. If an offender fails to complete, within a time
4 specified by the court, any community service, screening
5 program or treatment program ordered by the court, the offender
6 shall be sentenced to not less than an additional sixty
7 consecutive days in jail. A penalty imposed pursuant to this
8 paragraph shall not be suspended or deferred or taken under
9 advisement.

10 G. Upon a fourth conviction pursuant to this
11 section, an offender is guilty of a fourth degree felony and,
12 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
13 shall be sentenced to a term of imprisonment of eighteen
14 months, six months of which shall not be suspended, deferred or
15 taken under advisement.

16 H. Upon a fifth conviction pursuant to this
17 section, an offender is guilty of a fourth degree felony and,
18 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
19 shall be sentenced to a term of imprisonment of two years, one
20 year of which shall not be suspended, deferred or taken under
21 advisement.

22 I. Upon a sixth conviction pursuant to this
23 section, an offender is guilty of a third degree felony and,
24 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
25 shall be sentenced to a term of imprisonment of thirty months,

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1 eighteen months of which shall not be suspended, deferred or
2 taken under advisement.

3 J. Upon a seventh or subsequent conviction pursuant
4 to this section, an offender is guilty of a third degree felony
5 and, notwithstanding the provisions of Section 31-18-15 NMSA
6 1978, shall be sentenced to a term of imprisonment of three
7 years, two years of which shall not be suspended, deferred or
8 taken under advisement.

9 K. Upon any conviction pursuant to this section, an
10 offender shall be required to participate in and complete,
11 within a time specified by the court, an alcohol or drug abuse
12 screening program approved by the department of finance and
13 administration and, if necessary, a treatment program approved
14 by the court. The requirement imposed pursuant to this
15 subsection shall not be suspended, deferred or taken under
16 advisement.

17 L. Upon a second or third conviction pursuant to
18 this section, an offender shall be required to participate in
19 and complete, within a time specified by the court:

20 (1) not less than a twenty-eight-day
21 inpatient, residential or in-custody substance abuse treatment
22 program approved by the court;

23 (2) not less than a ninety-day outpatient
24 treatment program approved by the court;

25 (3) a drug court program approved by the

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1 court; or

2 (4) any other substance abuse treatment
3 program approved by the court.

4 The requirement imposed pursuant to this subsection shall
5 not be suspended, deferred or taken under advisement.

6 M. Upon a felony conviction pursuant to this
7 section, the corrections department shall provide substance
8 abuse counseling and treatment to the offender in its custody.
9 While the offender is on probation or parole under its
10 supervision, the corrections department shall also provide
11 substance abuse counseling and treatment to the offender or
12 shall require the offender to obtain substance abuse counseling
13 and treatment.

14 N. Upon a conviction pursuant to this section, an
15 offender shall be required to obtain an ignition interlock
16 license and have an ignition interlock device installed and
17 operating on all motor vehicles driven by the offender,
18 pursuant to rules adopted by the bureau. Unless determined by
19 the sentencing court to be indigent, the offender shall pay all
20 costs associated with having an ignition interlock device
21 installed on the appropriate motor vehicles. The offender
22 shall operate only those vehicles equipped with ignition
23 interlock devices for:

24 (1) a period of one year, for a first
25 offender;

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1 (2) a period of two years, for a second
2 conviction pursuant to this section;

3 (3) a period of three years, for a third
4 conviction pursuant to this section; or

5 (4) the remainder of the offender's life, for
6 a fourth or subsequent conviction pursuant to this section.

7 O. Five years from the date of conviction and every
8 five years thereafter, a fourth or subsequent offender may
9 apply to a district court for removal of the ignition interlock
10 device requirement provided in this section and for restoration
11 of a driver's license. A district court may, for good cause
12 shown, remove the ignition interlock device requirement and
13 order restoration of the license; provided that the offender
14 has not been subsequently convicted of driving a motor vehicle
15 while under the influence of intoxicating liquor or drugs.
16 Good cause may include an alcohol screening and proof from the
17 interlock vendor that the person has not had violations of the
18 interlock device.

19 P. In the case of a first, second or third offense
20 under this section, the magistrate court has concurrent
21 jurisdiction with district courts to try the offender.

22 Q. A conviction pursuant to a municipal or county
23 ordinance in New Mexico or a law of any other jurisdiction,
24 territory or possession of the United States or of a tribe,
25 when that ordinance or law is equivalent to New Mexico law for

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1 driving while under the influence of intoxicating liquor or
2 drugs, and prescribes penalties for driving while under the
3 influence of intoxicating liquor or drugs, shall be deemed to
4 be a conviction pursuant to this section for purposes of
5 determining whether a conviction is a second or subsequent
6 conviction.

7 R. In addition to any other fine or fee that may be
8 imposed pursuant to the conviction or other disposition of the
9 offense under this section, the court may order the offender to
10 pay the costs of any court-ordered screening and treatment
11 programs.

12 S. With respect to this section and notwithstanding
13 any provision of law to the contrary, if an offender's sentence
14 was suspended or deferred in whole or in part and the offender
15 violates any condition of probation, the court may impose any
16 sentence that the court could have originally imposed and
17 credit shall not be given for time served by the offender on
18 probation.

19 T. As used in this section:

20 (1) "bodily injury" means an injury to a
21 person that is not likely to cause death or great bodily harm
22 to the person, but does cause painful temporary disfigurement
23 or temporary loss or impairment of the functions of any member
24 or organ of the person's body;

25 (2) "commercial motor vehicle" means a motor

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1 vehicle or combination of motor vehicles used in commerce to
2 transport passengers or property if the motor vehicle:

3 (a) has a gross combination weight
4 rating of more than twenty-six thousand pounds inclusive of a
5 towed unit with a gross vehicle weight rating of more than ten
6 thousand pounds;

7 (b) has a gross vehicle weight rating of
8 more than twenty-six thousand pounds;

9 (c) is designed to transport sixteen or
10 more passengers, including the driver; or

11 (d) is of any size and is used in the
12 transportation of hazardous materials, which requires the motor
13 vehicle to be placarded under applicable law; and

14 (3) "conviction" means an adjudication of
15 guilt and does not include imposition of a sentence."

16 Section 2. Section 66-8-110 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 518, as amended by Laws 2003, Chapter 51,
18 Section 12 and by Laws 2003, Chapter 90, Section 5) is amended
19 to read:

20 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL
21 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

22 A. The results of a test performed pursuant to the
23 Implied Consent Act may be introduced into evidence in any
24 civil action or criminal action arising out of the acts alleged
25 to have been committed by the person tested for driving a motor

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1 vehicle while under the influence of intoxicating liquor or
2 drugs.

3 B. When the blood or breath of the person tested
4 contains:

5 (1) an alcohol concentration of less than four
6 one hundredths, it shall be presumed that the person was not
7 under the influence of intoxicating liquor;

8 (2) an alcohol concentration of at least four
9 one hundredths but less than eight one hundredths:

10 (a) no presumption shall be made that
11 the person either was or was not under the influence of
12 intoxicating liquor, unless the person is driving a commercial
13 motor vehicle; and

14 (b) the amount of alcohol in the
15 person's blood or breath may be considered with other competent
16 evidence in determining whether the person was under the
17 influence of intoxicating liquor; or

18 (3) an alcohol concentration of four one
19 hundredths or more and the person is driving a commercial
20 vehicle, it shall be presumed that the person is under the
21 influence of intoxicating liquor.

22 C. The arresting officer shall charge the person
23 tested with a violation of Section 66-8-102 NMSA 1978 when the
24 blood or breath of the person contains an alcohol concentration
25 of:

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- 1 (1) eight one hundredths or more;
- 2 (2) four one hundredths or more if the person
- 3 is driving a commercial motor vehicle.

4 D. When a person is less than twenty-one years of
5 age and the blood or breath of the person contains an alcohol
6 concentration of two one hundredths or more, the person's
7 driving privileges shall be revoked pursuant to the provisions
8 of the Implied Consent Act.

9 E. If the test performed pursuant to the Implied
10 Consent Act is administered more than three hours after the
11 person was driving a vehicle, the test result may be introduced
12 as evidence of the alcohol concentration in the person's blood
13 or breath at the time of the test and the trier of fact shall
14 determine what weight to give the test result for the purpose
15 of determining a violation of Section 66-8-102 NMSA 1978.

16 [~~E.~~] F. The determination of alcohol concentration
17 shall be based on the grams of alcohol in one hundred
18 milliliters of blood or the grams of alcohol in two hundred ten
19 liters of breath.

20 [~~F.~~] G. The presumptions in Subsection B of this
21 section do not limit the introduction of other competent
22 evidence concerning whether the person was under the influence
23 of intoxicating liquor.

24 [~~G.~~] H. If a person is convicted of driving a motor
25 vehicle while under the influence of intoxicating liquor, the

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1 trial judge shall [~~be required to~~] inquire into the past
2 driving record of the person before sentence is entered in the
3 matter."

4 Section 3. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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